

PT 96-37
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

DAVID C. CAMERON,)	
APPLICANT)	Docket No: 94-16-1711
)	
)	
v.)	Real Estate Exemption
)	for 1994 Tax Year
)	
DEPARTMENT OF REVENUE)	P.I.N.: 12-10-100-112
STATE OF ILLINOIS)	
)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE:

Mr. Terry L. Engel of Deutsch, Levy & Engel, appeared for David C. Cameron.

SYNOPSIS:

This matter comes on for hearing pursuant to David C. Cameron's (hereinafter referred to as "Cameron" or applicant") protest of the Illinois Department of Revenue's (herein referred to as the "Department") denial of Cameron's application for exemption from real estate taxes for the 1994 assessment year pursuant to 35 ILCS 200/15-5 *et seq.*¹ At issue is whether the above-captioned parcel

¹. In *People ex rel Bracher v. Salvation Army*, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 *et seq.*).

qualifies for exemption as "property of the United States" within the meaning of 35 ILCS 200/15-50. Following submission of all evidence and a careful review of the record, it is recommended that this parcel remain on the tax rolls for the 1994 assessment year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1 and 2.

2. The subject property consists of a 9,369 square foot lot located at 9650 W. Foster, Chicago IL. Its Permanent Index Number is 12-10-100-112. *Id*; Dept. Gr. Ex. No. 5.

3. Cameron obtained title to the subject property via a trustee's deed dated October 5, 1993. Applicant Ex. No. 2.

4. On September 28, 1989, Cameron's predecessor in title, the Cizzon Corporation (hereinafter "Cizzon") leased the subject property to the United States. Cizzon assigned its landlord's interest in this lease to Cameron as part of the transaction through which Cameron obtained title to the subject property. Applicant's Ex. No. 4.

5. The lease, which was in effect throughout the 1994 assessment year, granted the United States, as tenant, "the right to make alterations, attach fixtures, and erect additions structures or signs, in or upon the premises hereby leased, which alterations, fixtures additions, structures or signs so placed in or upon or attached to the said premises shall be and remain the property of the [United States] Government, and may be removed upon the date of

expiration or termination of this lease, or within ninety (90) days thereafter by or on behalf of the [United States] Government, or its grantees, or purchasers of said alterations, fixtures structures or signs." *Id.*

6. The lease further provided that:

The Government shall surrender possession of the premises upon the date of expiration or termination of this lease. If the Lessor by written notice of at least fifteen (15) days before the date of expiration or termination requests restoration of the premises, the Government at its option shall within ninety (90) days after such expiration or termination, or within such additional time as may be mutually agreed upon, either (1) restore the premises to as good condition as that existing at the time of the Government's initial entry upon the premises under this lease or any preceding lease ... ; or (2) make an equitable adjustment in the lease amount for the cost of such restoration of the premises or the diminution of the value of unrestored, whichever is less.

Id.

7. The lease did not specifically provide that the Government would pay real estate taxes. *Id.*

8. Pursuant to the lease, the United States Government (hereinafter "Government") erected a low-level wind shear tower on a 15 x 15 foot area of the subject parcel. The tower, a structure roughly 120 feet tall, was erected for air traffic safety purposes, such as alerting pilots to microbursts, dust or wind shears near O'Hare Airport. Tr. pp . 22, 24-25.

9. The Government owned the tower itself throughout the 1994 assessment year and did not use the structure for any purpose other

than air traffic safety during that time. Tr. pp. 22, 27;
Applicant's Ex. Nos. 7, 8.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from property taxes for the 1994 assessment year. Accordingly, under the reasoning given below, the determination by the Department that the above-captioned parcel does not qualify for exemption under 35 **ILCS** 200/15-50 should be affirmed. In support thereof, I make the following conclusions:

Property owned by the United States Government is immune from state and local taxation under the supremacy clause of the United States Constitution. U.S. Const. art. VI, Clause 2. This immunity arises from the necessity for preserving the independence of the dual system of federal and state governments under our constitutional system. McCulloch v. Maryland 17 U.S. (4 Wheat) 316 (1819). Therefore, real property of the federal government and its instrumentalities is immune from taxation except to the extent permitted by congressional action. City of Detroit v. Murray Corporation of America, 355 U.S. 489 489 (1958); Moline Water Power Co. v. Cox, 252 Ill. 348 (1911).

In order to effectuate federal immunity, the General Assembly enacted Section 200/15-50 of the Property Tax Code (35 **ILCS** 200/1-3 *et seq*) which provides that "[a]ll property of the United States is exempt, except such property as the United States has permitted or may permit to be taxed."

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

Here, the Government does not own the subject parcel. Rather, it leases the property from applicant, a private individual, for purposes related to air traffic safety. Accordingly, applicant concedes that the subject parcel's underlying land is subject to taxation. Tr. pp. 29-30. However, he argues that its improvement, the wind shear tower, is exempt under Section 200/15-50. *Id.*

Applicant cites City of Chicago v. Department of Revenue, 147 Ill.2d 484 (1992) in support of its contention. There, the Illinois Supreme Court held that two buildings owned by the City could be separately exempted from the underlying land which the City subleased from Kraft, a private corporation.

In reaching its conclusion, the City of Chicago court drew a distinction between cases such as Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970), where the court held that

land and improvements could not be separated for *assessment* purposes,² and cases in which the court upheld allowed or upheld partial exemptions, such as City of Lawrenceville v. Maxville, 6 Ill.2d 42 (1955) and Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971), (hereinafter "ITT").

The assessment context is important in the instant case because, unlike City of Chicago, Cameron's lease with the federal government contains no provision obligating the latter to pay real estate taxes. Absent such a provision, Section 200/9-175 of the Property Tax Code (35 ILCS 200/9-175) which provides in relevant part that "[t]he owner of property on January 1 in any year shall be liable for the taxes of that year...", imposes that liability on the applicant.

While Cameron is legally obligated to pay real estate taxes, the plain meaning of Section 20/15-50 clearly establishes that the General Assembly did not intend for him to benefit from the exemption set forth therein. Rather, such plain language indicates that the intended beneficiary of this exemption is his lessee, the federal government. Thus, unlike City of Chicago, the applicant in this proceeding and the statutorily intended beneficiary³ herein are not the same entity.

². The Springfield Marine Bank court specifically held that "[w]here the owner of real estate is not exempt, the tax is on the value of the property, not the value of the owner's interest; and it [the assessment] falls upon the owner of title, even where the right to use of the land has been transferred in a [long term] lease ...[.]". See also, People ex rel. Carr v. City of Chicago, 323 Ill. 68 (1926).

³. The provisions at issue in City of Chicago were intended to benefit municipalities. Those provisions, found in Ill. Rev. Stat. 1987, ch. 120, par. 500.6, are (for purposes of the present discussion) identical to the current version of that exemption. The current version appears in 35 ILCS 200/15-60(b) and provides for exemption of "[A]ll public buildings belonging to any county, township or incorporated town, with the ground on which the buildings are erected."

The above distinction is critical because Cameron is a non-exempt, private individual. Thus, granting his request for exemption will effectively relieve Cameron of liability for real estate taxes which, pursuant to the preceding analysis, are properly assessed against him, *not* the federal government. Thus, the tax savings which result from such exemption will inure to Cameron's private pecuniary benefit rather than effectuate federal immunity from local taxation.

The Property Tax Code and its predecessors⁴ contain a specific statutory scheme prohibiting private pecuniary profit. The provisions governing exemption of schools (35 ILCS 200/15-35) religious institutions (35 ILCS 200/15-40) and charities (35 ILCS 200/15-65) all deny exemption to entities that lease or otherwise use their properties "with a view to profit."⁵ Furthermore, the provisions that govern exemption of leased municipal properties (35 ILCS 200/15-60(c)) provide for an assessment of taxes against the

⁴. As noted in footnote 1, only the Property Tax Code, 35 ILCS 200/1-3 *et seq.*, governs disposition of the instant case. However, it should be noted that the Revenue Act of 1939, 35 ILCS 205/1 *et seq.*, contained statutes governing property tax exemptions for the 1992 and 1993 tax years. The exemption provisions for tax years prior to 1992 were contained in Ill. Rev. Stat. 1991 par. 500 *et seq.* These provisions, as well as their predecessors, were repealed when the Property Tax Code took effect January 1, 1994. See, 35 ILCS 200/32-20.

⁵. For analysis of the prohibition on leasing for profit in the exemption context, see Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919 (1st Dist. 1988). There, appellant sought to exempt property which it leased from a private individual. Although appellant was an exempt organization, and used the subject property exclusively for exempt religious and educational purposes, the court held against exemption on grounds that the subject property was owned by a non-exempt, private individual who leased the premises to the appellant for purposes of pecuniary profit. See also, Children's Development Center, Inc. v. Olson, 52 Ill.2d 322 (1972).

non-exempt lessee (and his leasehold interest) consistent with Section 200/9-195 of the Property Tax Code.⁶

These provisions, taken as a whole, indicate strong legislative disdain for granting exemption to those who use or hold leaseholds on properties used for non-exempt purposes, such as pecuniary profit. In a line of cases dating to People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944), (hereinafter "Goodman"), Illinois courts have sought to enforce the aforementioned statutory scheme, and its prohibition on pecuniary profit, by imposing a constructive trust on those who held title to properties used exclusively for exempt charitable or educational purposes.⁷ Although the title holders in each of these cases were not, in and of themselves, exempt, the courts imposed constructive trusts in order to avoid "penaliz[ing] charitable institution[s] for failing to acquire conventional forms of financing," and thereby, "defeat the stated objective and policy consideration of encouraging charitable activity." Christian Action Ministry, *supra* at 62; Cole Hospital, *supra* at 100.

⁶. Section 200/9-195 (35 **ILCS** 200/9-195) provides in relevant part that:

... [w]hen property which is exempt from taxation is leased to another whose property is not so exempt, and the leasing of which does not make the property taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his or her assignee. Taxes on that property shall be collected in the same manner as on property that is not exempt, and the lessee shall remain liable for those taxes.

⁷. See, Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978); Southern Illinois University Foundation v. Booker, 98 Ill. App. 3d 1062 (5th Dist. 1981); Cole Hospital v. Champaign County Board of Review, 113 Ill. App.3d 96 (4th Dist. 1983).

Such a trust cannot be imposed in instant case because the underlying policy objectives of Section 200/15-50 are protecting federalism and federal supremacy, not encouraging charitable or educational activity. Furthermore, the instant record does not disclose that practical business or financial considerations prevented the Government from purchasing the property in question. Rather, the record indicates that the Government entered into this lease as part of an arm's length business transaction from which it obtains the benefit of its bargain by using the land for air traffic safety purposes. Insofar as the record further establishes that the lessor obtains the benefit of his bargain and private pecuniary benefit from the rent proceeds, I conclude that the disparities in economic power which lead the courts to impose constructive trusts in Goodman and its progeny are not present in the instant case.

Taken as a whole, the preceding analysis establishes that granting Cameron's request for exemption will not effectuate federal immunity from local taxation. Rather, it will effectively relieve Cameron of liability for real estate taxes that are properly assessed against him. Because alleviating this liability necessarily implies that Cameron will receive pecuniary benefit from the resulting tax savings, and such savings cannot be subject to a constructive trust in favor of the federal government, I conclude that while the Government clearly uses Cameron's property for exempt purposes, such use, in and of itself, does not relieve the property, (and, under the above reasoning, its improvement), from real estate taxation.⁸

WHEREFORE, for the reasons set forth above, it is my recommendation that the above-captioned parcel remain on the tax rolls for the 1994 assessment year.

Date

Alan I. Marcus,
Administrative Law Judge

⁸. Cf., Choctaw, Oklahoma & Gulf Railroad Company et al v. Mackey,
256 U.S. 531 (1921).